JD(ATL)—25—05
Pascagoula, MS

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

UNITED SCAFFOLDING, INC.

and **Cases 15–CA–17232**
15–CA–17281
UNITED BROTHERHOOD OF 15–CA–17295
CARPENTERS AND JOINERS OF 15–CA–17325
AMERICA, MISSISSIPPI 15–CA–17477
CARPENTERS LOCAL 303

Beau Pines, Esq.,
for the General Counsel.
Robert Weaver, Esq.,
for the Charging Party.
G. Mark Jodon, Esq.,
for the Respondent.

DECISION

Statement of the Case

LAWRENCE W. CULLEN, **Administrative Law Judge**: This consolidated case was heard before me in New Orleans, Louisiana, on February 22, 2005. The case is based on charges filed by United Brotherhood of Carpenters and Joiners of America, Mississippi Local 303 (the "Charging Party" or "the Union") with the National Labor Relations Board ("the Board") and alleges that United Scaffolding, Inc. ("the Respondent" or "USI") has committed violations of Sections 8(a)(1) and (5) of the National Labor Relations Act ("the Act"). The complaint is joined by the answer filed by the Respondent.

After due consideration of the testimony and evidence received at the hearing and the motion filed by the Respondent to dismiss the case at the hearing and the original briefs filed by the parties, I make the following:

Findings of Fact and Conclusions of Law[1]

I. The Business of the Respondent

The complaint alleges, Respondent admits and I find that at all times material herein that Respondent is and has been a Delaware Corporation with an office and place of business

1 The following includes a composite of the credited testimony and the exhibits received at the hearing. All dates unless otherwise stated are in 2003.

located in Pascagoula, Mississippi, and has been providing services in the building and construction industry through the erection, dismantling and rental of scaffolds and scaffold material, that Respondent annually, in conducting its aforesaid business operations, purchases and receives at its Pascagoula, Mississippi facility and Mississippi job sites, goods valued in excess of $50,000 directly from points outside the State of Mississippi and has provided services valued in excess of $50,000 in States other than the State of Mississippi and that Respondent has been engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization

The complaint alleges Respondent admits and I find that at all times material herein the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Appropriate Unit

The complaint alleges, Respondent admits and I find that at all times material herein the following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> INCLUDED: All employees employed by United Scaffolding, Inc. as maintenance scaffold builders at the Chevron Refinery in Pascagoula, Mississippi, who were employed during the payroll period ending July 20, 2003. EXCLUDED: All other employees, office clerical employees, subcontract employees, professional employees, guards and supervisors as defined in the Act.

It is further alleged, admitted and I find that on September 2, 2003, the Union was certified as the exclusive collective bargaining representative of the Unit. The complaint also alleges, Respondent denies and I find that at all times since September 2, 2003, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

IV. The Alleged Unfair Labor Practices

The complaint alleges and Respondent denies that about January 2004, Respondent by Site Superintendent, T.C. Plylar, Jr., and Site General Foreman, Chris Scruggs at a safety meeting at Respondent's facility, announced the unilateral implementation of a bonus plan with end of the year benefits. At the hearing the parties stipulated that as a result of the Union's objections, this plan was never implemented. The complaint alleges and Respondent denies that about February 24, 2004, Respondent by T.C. Plylar, Jr., at Respondent's facility, distributed a memo to employees classified as maintenance scaffold builders advising them that they were no longer represented by the Union. The complaint alleges, Respondent admits and I find that about July 30, 2004, Respondent by Mobile District Manager Jay Kemp, at Respondent's facility, distributed a memo to its employees regarding the decertification of the Union. The complaint alleges that the memo was distributed to encourage its employees disaffection and decertification of the Union.

The complaint alleges and Respondent denies and I find that about December 1993 Respondent, an employer engaged in the building and construction industry, entered into a collective-bargaining agreement effective for the period July 31, 1992 to July 31, 1993, whereby it recognized the Union as the exclusive collective-bargaining representative of the Unit and agreed to continue the agreement in effect from year to year thereafter unless timely notice was given in accordance with the terms of the final section of the agreement. The complaint further alleges, Respondent admits and I find that from July 31, 1992 until July 31, 2003, pursuant to the agreement, the Union was recognized as the exclusive collective-bargaining representative of the Unit by Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act and that such recognition had been embodied in successive collective-bargaining agreements, the most recent of which was effective from July 31, 2002 to July 31, 2003. The complaint alleges, Respondent admits and I find that since about January 5, 2004, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees that Respondent now classifies as "turnaround" employees.

The complaint alleges and Respondent denies and I find that since about December 7, 2003, the Union, by letter, has requested that Respondent furnish the Union with the following information regarding all laid off employees and all employees hired after August 21, 2003:

Date of hire;
Date laid off;
Rate of pay;
Total number of hours worked while employed with United Scaffolding at the Chevron Refinery;
Address; and
Phone numbers.

The complaint further alleges, and Respondent denies that the information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit. The complaint also alleges and Respondent denies that since about January 5, 2004, Respondent, by letter, has failed and refused to furnish the Union with the information requested.

The complaint alleges, and Respondent denies that since about October 2003, and continuing dates thereafter Respondent laid off numerous bargaining unit employees whose names are currently unknown to the General Counsel but are particularly within Respondent's knowledge.

The complaint alleges and Respondent denies that it bypassed the Union and dealt directly with its employees in the Unit by offering them new health insurance benefits and that since about November 2003, Respondent made changes to the health insurance benefits received by bargaining unit employees.

The complaint alleges, and Respondent denies that since about January 1, 2004, Respondent reduced the wages of bargaining unit employees.

The complaint alleges, and Respondent denies that since about February 24, 2004, Respondent changed the method of final paychecks distribution for bargaining unit employees.

Facts

United Scaffolding Inc. (USI) has performed maintenance scaffolding services for Chevron at its Pascagoula, Mississippi refinery for many years pursuant to contracts that USI and Chevron have entered into over the years. In furtherance of its duties under these agreements USI has entered into a series of 8(f)[2] agreements with Local 303 whereby the Union has agreed to refer to USI qualified maintenance scaffolding employees within 48 hours of a request and if the Union is unable to do so, USI may bring in other employees. The agreements between USI and Chevron provide that Chevron notifies USI of its requirements and USI determines with Chevron the number of employees to be required. USI management personnel and specifically Chris Scruggs, its general foreman, plan and schedule the work in accordance with Chevron's requirements and the Union supplies the maintenance scaffolding employees called for by USI as required. In practice in recent years USI has utilized a workforce of the scaffolding employees of about 30 to 40 employees who work a 40 hour week plus overtime as necessary on a permanent basis. These employees have since August 2003, been referred to by USI as its "core group" of scaffold builders. In addition to the regular ongoing maintenance scaffolding work, there are periodic surges in the work load at various times principally occurring near the end of the year when certain of Chevron's operations are shut down for annual maintenance. To meet these surges in the work load USI in conjunction with Chevron determines the amount of additional man-hours required and USI notifies the Union of the number of additional employees that will be required to do the work and the approximate length of time they will be required. As of August of 2003, USI began referring to these additional employees as "turnaround" employees whereas previously all of the employees had been referred to as maintenance scaffold builders regardless of their permanent status or their use to meet the surges in manpower requirements.

At the hearing Mike Appling, who is executive vice president of XServe, the parent company of USI, and who is also an officer of USI testified that the "turnaround" employees are "hired to be fired" emphasizing the temporary nature of their employment. Jay Kemp is the Branch Manager for the Mobile branch of USI and oversees the operations in Pascagoula, Mississippi. Kemp testified that the work surge has been such that on occasion there have been over 600 employees in the plant. The Union had been typically advised by a fax of the number of employees required by USI and the appropriate deductions from their wages for pension, health and welfare and other Union dues and assessments had been made and the

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2 Section 8(f) of the Act permits employers engaged primarily in the building and construction industry to enter into agreements covering employees in the building and construction industry with a labor organization of which building and construction employees are members where the majority status of the labor organization has not been established under the provisions of Section 9 of the Act.

Union had also been advised of their leaving the job as it concluded or the employees left the job for other reasons.

In April of 2003, USI and Chevron began negotiations for a new agreement. The Union was not present during these negotiations. Included in this agreement was the billable hours that would be billed to Chevron by USI which are determined by the amounts of the wages and benefits paid to the maintenance scaffold builders and charges for USI's overhead, profit and related costs for materials and other costs incurred by USI as set out in the agreement. The largest component of these billable hours was the wage and benefit and Union charges. At that time these charges consisted of a $16.56 per hour charge for wages and benefits for each employee. According to the testimony of Kemp, Chevron initially wanted to reduce the hourly wage and benefit charges to $12 per hour for scaffold builders as it paid in other locations. Kemp testified that he advised Local 303 Business Manager David Ellis of this and that Ellis declined to discuss it. Additionally at this time USI took the step of advising Local 303 of its intent to terminate its 8(f) agreement with Local 303 which it could do by the terms of the contract which would conclude the Union's recognition status on July 31, 2003.

On July 17, 2003, Union Business Manager Ellis filed a petition for an election in Case 15-RC-8476. The parties entered into a stipulated election agreement on July 30. On August 5, USI sent the election eligibility list consisting of 34 maintenance scaffold builders to the Region 15 office of the Board. After some amendments to the list, the election was held on August 21 with an approximate number of 35 eligible voters and in which 33 votes were cast for the Union and 2 ballots were challenged. On September 2, the Board certified that a majority of the valid ballots had been cast for the Union and that it was the exclusive collective bargaining representative of the employees in the unit. On September 4, Business Manager Ellis sent a letter to Kemp, "asking that you set aside some time as soon as possible so that we may begin the bargaining process" and stating, "I cannot stress enough the importance beginning the process for United Scaffold and our members working for you at the Chevron Refinery." The letter further requested that USI, "Please respond to this office as soon as possible with a time and place that is convenient for us to discuss United Scaffolding issues so that we can begin the bargaining process."

According to the testimony of Kemp, USI engaged in a number of bargaining sessions with Chevron in which Chevron was determined to lower the wage and benefit rates paid to the maintenance scaffold builders starting with a low of $12 per hour but that Kemp and USI representatives were able to get the rate bargained upward to $14 per hour. Kemp testified that after each meeting with Chevron he informed the Union of this and that Ellis merely stated the Union would not agree to any reduction in the rates. Ultimately USI entered into another agreement with Chevron in August, 2003, whereby the parties agreed to reduce the wage rates to $14 per hour to be effective for the "turnaround" employees in August, 2003, but not to become effective for the "core group" employees until January 1, 2004. Ellis testified he was not notified of these changes and did not find out about them until later when he learned of them from the employees who were sent to the Chevron Refinery. It is undisputed that USI entered into the contract with Chevron without having bargained with the Union and in the absence of any agreement from the Union permitting USI to change the wage rates. On December 17, Ellis sent Kemp a letter reaffirming the Union's position as

addressed "in our phone conversation yesterday on 12-16-2003. It is the position of the Carpenters Union that United Scaffold should have notified and bargained with the Union to discuss any employees that have been hired and or laid off since August 21, 2003. It is further the position of the Carpenters Union that United Scaffolding reinstates any employee affected and make those employees whole in every way including backpay from the time of lay-off. Additionally this letter is to serve as a request for the following information for each of the employees in question:

Date of hire
Date laid off
Rate of pay
Total number hours worked while employed with United Scaffolding at the Chevron Refinery
Addresses
Phone numbers."

The Union requested the foregoing information within seven (7) working days from USI's receipt of the letter.

On January 5, 2004, M. Thi Tran, the General Counsel of XServe, Inc., the parent company of USI responded by letter to Ellis:

> While USI has reduced its work force from time to time since August 21, 2003, those reductions did not affect the Core Group but instead, involve employees who are part of USI's 'turnaround' work force, employees who are hired and laid off based on a project by project need. These turnaround employees are **not** part of the bargaining unit and therefore, are not represented by the Union. The distinction between 'maintenance' employees and the turnaround employees is firmly established based on industry practice as well as in the divergent benefits received by each group. Maintenance employees are generally employed for longer periods as opposed to turnaround employees whose terms are usually seasonal or limited to the projects for which they are hired. In addition, maintenance employees are paid at a higher rate, and receive vacation, medical and other benefits which are not afforded to turnaround employees. Therefore, there is a clear and established segregation between the category of employees who are part of the bargaining unit, the Core Group, and those who are not represented by the Union, the turnaround employees. In fact, during the bargaining process over the certain imminent changes to the pay rate schedule, discussed further below, you made it very clear which group you represented with your multiple proposals to increase the benefits of the Core Group at the expense of the turnaround group. Since the Union does not represent the turnaround group of employees, USI owes no duty of notice or bargaining to the Union with respect to those employees. Therefore, we reiterate, once again, that there has been no lay-off of any USI employees who are part of the bargaining unit represented by the Union.

In addition, we would like to remind you of the reduction to the pay rate of the Core Group; for example, the pay rate for the Core Group employees classified as "lead men" are to be reduced from $16.56/hour to $14.50/hour. As previously discussed on numerous occasions, such rate change is effective January 1, 2004. This rate change is due to the implementation of a new rate change in Chevron at its refinery plant in Pascagoula, Mississippi. We first gave you notice of Chevron's intention to implement this new rate schedule on or about October 21, 2003. Since then, as part of our efforts to keep the Union informed and engaged in the bargaining process, we have discussed this issue in numerous telephone conferences as well as two (2) in person meetings: one at the corporate office of USI's parent company, XServ, Inc. in Houston, Texas on October 21, 2003 among John Creech, Executive Secretary-Treasurer, Richard Arispe, Executive Secretary-Treasurer, Jose "Pepe" Collado, vice President of the Southern District, and Jerry Rhoades, Business Development – Operation Common Ground, of the Union, and Mike McGinnis, CEO, Mike Appling, Sr. CP and CFO, Jay Kemp, manager of the USI Alabama branch, and Mike Hood, manager of the USI Baton Rouge branch, of XServ; and the second meeting at the XServ Mobile branch in Mobile, Alabama on November 4, 2003 among you, John Creech and Jay Kemp. At each of the in person meetings, the Union was given a copy of and/or the opportunity to view, and discuss, the contract between Chevron and USI which included the new pay rate schedule.

To date, we have engaged in good faith efforts to bargain with both the Union and Chevron regarding the new rate schedule. While a number of options were discussed, we were not able to agree to one the Union's main proposal to either maintain or increase the Core Group's compensation by reducing the turnaround employees' pay rate. This is due to the fact that Chevron's new rate schedule is not based on a composite rate structure but is specific to each category of employees, including a different pay rate for the Core Group versus the different levels of turn around employees. Accordingly, unless otherwise mutually agreed to by Chevron, USI and the Union, the new pay rate schedule shall be effective as previously notified.

We continue to be available to the Union for discussion on this and other matters as necessary . . ."

On January 13, 2004, Ellis responded by letter to M. Thi Tran as follows:

This letter is in response to your letter dated January 5, 2004. For over (30) thirty years the Carpenters have represented Scaffold Builders at the Chevron Refinery. In all of that time including now we have represented all scaffolding carpenters that did scaffold work under a maintenance agreement between Chevron and United Scaffolding and various other Scaffolding Contractors. If you will refer to the previous contracts under which the Union has represented **maintenance** scaffold builders, at the Chevron Refinery, you find that the term maintenance work has always fallen under the term maintenance scaffolding. This position is supported by the fact that United Scaffolding has throughout its relationship with

the Union paid Benefits on all employees that were working under the Maintenance Agreement Between United Scaffolding and Chevron. Further United Scaffolding recognized the Union In 2001 and 2002 on a separate contract at the Chevron refinery. For you to suggest that the Bargaining Unit at the Chevron Refinery in Pascagoula, Mississippi is limited to what is known as the Core Group of Maintenance Scaffolding Carpenters is incorrect. Circumstances were at the time of the certification of the Carpenters Union was that United has reduced in manpower to the point that all that remained employed at the Pascagoula Refinery were the "Core group" of scaffolding carpenters. This does not however limit the Carpenters Union to represent only the Core group of Scaffolding carpenters. As by definition "Core Group" Scaffolding Carpenters generally are the employees that are used to be foreman or lead persons when the scope of the maintenance work calls for the workforce to grow. Sir, if the integrity of the core group of employees is protected even at the expense of scaffolding carpenters that are new to the trade it is a benefit to that new employee as he proves himself or herself and becomes part of that core group. Therefore we agree that we made it very clear that the Carpenters Union represents all of the Scaffolding Carpenters as spelled out in the Certification of Representative dated September 2nd 2003.

Therefore we reiterate, once again that there has been lay-offs of USI employees who are part of the bargaining unit.

In addition we would like to remind you that simply informing the Union of a pay cut is not bargaining in good faith. You state that to date USI has engaged in good faith bargaining, USI has not changed its position in any way. As you stated the Carpenters Union has made multiple attempts at bargaining but we have yet to see any movement from USI in the direction of good faith bargaining. Yes, there have been numerous conversations but they all add up to the Union expressing a desire for good faith bargaining and United Scaffolding has not moved from its position of August 2003. As you remind us in your letter dated January 5, 2004 you state United first informed us in October of 2003 of their intention to cut the wages. United informed the employees, our members, of this intention in August in captive audience meetings with former President of United Scaffolding, Herman Tibdaux.

While we do appreciate your offer to be available to discuss these and any other issue, to date, we do not feel that USI has bargained in good faith. You have an obligation to bargain in good faith on these issues, and we call on you to do so, and to rescind the layoffs and all other unilateral changes. Your letter dated January 5, 2004 reinforces the position of bad faith bargaining that you have consistently taken. Therefore, please find attached a copy of the amended board charges that will reflect your stated position.

It is undisputed that USI and the Union met on only two occasions, once in October 2003, in Houston, Texas, and a second time in November 2003, in Kemp's office at the Chevron plant. In both meetings the Union representatives were informed by the USI

representatives that Chevron was firm in refusing to pay over the $14 per hour rate for non-union scaffold builders. At the second meeting Ellis and Union Representative Creech presented Respondent's representative with a document entitled "Talking Points" wherein it set out items for negotiations including wages. The talking points are as follows:

(Talking Points with United Scaffolding) 10-06-2003
(It is understood that each employee that is on the payroll as of October 31, 2003 shall be placed in the appropriate level, but in no case will any employee take a reduction of pay.)

It is understood that in the spirit of controlling cost of manpower that the company shall make every effort to maintain a workforce comprised of a three-man crew. This crew is to consist of:

1) Lead Journeymen
2) Scaffold builder 1
3) Scaffold builder 2

(It is further understood that the Helper classification will not erect or be on any scaffolding, but may be used in the passing of material.)

In the spirit of maintaining the highest level of skill possible when the workload requires a reduction of the workforce it is agreed that the Maintenance (core group) Lead Journeymen will be retained as the workforce reduces to 40 or less employees.

It is understood that from time to time it may be necessary to reduce the number of employees below the target number of forty, if this should occur and a Maintenance (Core Group) Lead Journeyman is to be laid off, when the work becomes available the (Core Group) employees shall be given preference when manning the work.

If a (Core Group) Employee refuses a recall, he shall forfeit his status as a (Core Group Employee).

If a (Core Group Employee is not recalled within a period of one (1) year then that employee loses his status of being a (Core Group) employee.

(Talking Points with United Scaffolding) 10-06-2003

Following is the Breakdown of pay rates and benefits for each level:

1. Maintenance (core group) Lead Journeymen-------$17.00 per/hr.
   Benefit Package: Health & Welfare----$2.00
   Pension----------$1.00
   App. & Training-----$0.36
   Annuity----------$0.50
   Total Package--------$3.86

2. Lead Journeymen.
   a) Employees hired into a lead Journeymen position after October 31, 2003 with prior Lead Journeymen experience at the Pascagoula Chevron Refinery will be hired in at the rate of $.50 Cents per/hr. below that of a Maintenance (Core Group) Lead Journeyman.
   b) Employees hired into a lead Journeymen position after October 31, 2003 without prior experience at the Pascagoula Chevron Refinery will be hired in at the rate of $1.00 per/hr. below that of A Maintenance (Core Group) Lead Journeymen.

Benefit Package:	Health & Welfare	$2.00
	Pension	$1.00
	App. & Training	$0.36
	Total Package	$3.36

3. Scaffold builder 1---------- $15.00

Benefit Package:	Health & Welfare	$2.00
	Pension	$1.00
	App. & Training	$0.36
	Total Package	$3.36

4. Scaffold builder 2---------- $13.00

Benefit Package:	Health & Welfare	$2.00
	App. & Training	$0.36
	Total Package	$2.36

5. Helper $9.00

It is understood that the helper will be non-skilled labor and will begin to receive benefits when they are promoted into a Scaffold builder 2 position.

At both meetings the parties expressed a willingness to negotiate but, neither party presented a proposed agreement. There was no discussion of the elements that would go into a labor agreement. Kemp told the Union representatives that the talking points presented by the Union had some good points and some bad points. However, Chevron and USI had already entered into an agreement in August setting the wage rate at $14.00 per hour to be effective August 1, 2003, for the turnaround employees and for the $14.00 per hour rate for core group employees to be effective January 1, 2004. However, USI did not inform the Union of this. Union Business Manager Ellis learned of the change in wage rates that had been reduced to $14.00 per hour for "turnaround employees" from the employees themselves as they were being hired and laid off by USI without any notice being given to the Union of

these unilateral changes. In his letter of December 17, 2003, to USI, Ellis reminded the Respondent USI of its obligations to notify the Union. By his February 24, 2004, memo to all USI employees, Site Superintendent, T.C. Plylar, Jr. notified them that USI had "gone from being Union to being open shop."

As noted above, in late April or early May 2003, USI commenced negotiations with Chevron for a new contract for scaffold services at the Pascagoula refinery. Kemp testified Chevron was proposing that USI reduce the hourly wage rate of $16.56 per hour for Carpenter Journeymen and $9.94 per hour for first year apprentices which USI then paid its employees Kemp testified he had about four (4) telephone conversations with Business Agent Ellis in which he informed Ellis of the proposed wage concessions. Ellis testified he told Kemp the Union could not negotiate a hypothetical figure and to put in writing what kind of concessions USI was seeking. However, USI did not do so, and did not present the Union with any information to justify the wage concessions. Moreover USI never notified the Union that Chevron was proposing a dual rate wage scale for maintenance scaffold builders based on a distinction between "core group" and "turnaround" employees. USI did not offer any written wage proposals to the Union between April and August and the Union did not make any concessions. The Union did offer not to seek an increase in the wages covered by the maintenance scaffold agreement. Kemp told Ellis that if the Union did not make any wage concessions, USI would become an "open shop." Ellis informed Kemp he would do his best to keep it union.

On August 12, 2003, USI signed Blanket Service Agreement No. 99015146 to perform scaffolding services for Chevron. Chevron signed the agreement on August 18. On August 22, USI signed a scope of work agreement to convert the agreement to Local Agreement No. 95015146 for scaffolding services to be performed at the Pascagoula refinery and Chevron signed this local agreement on September 5. The agreements required that USI provide "competent employees that are fit for duty" and that "scaffold builders are experienced scaffold erectors who have completed apprenticeship training or equivalent."

Blank Service Agreement No. 99015146 contains a "rate Schedule" with "Billable Rates" and makes reference to "Labor Rate Computation Sheets "Effective August 1, 2003 through July 31, 2008. USI's billable rate to Chevron for each hour worked by a Scaffold Builder working a "turnaround" project is $19.94. Between August 1 and December 21, USI billed Chevron $24.28 for each hour worked by a scaffold builder in the "core group." Beginning January 1, 2004, and continuing through July 31, 2008, USI's billable rate to Chevron for each hour worked by a Scaffold Builder in the "core" group is $22.05. Chevron does not require that USI pay its employees the "billable rate." USI utilizes the labor rate computation sheets by which it pays its employees including Scaffold Builders (GC Exh. 2, Section 2.2; GC Exh. 2(a) – (c); Tr. 20). The labor rate computation sheets are not a part of Respondent's contract with Chevron but apply, "only as negotiation tool." (GC Exh. 2, Section 2.2; Tr. 22. The labor rate computation sheets, effective August 1 and continuing through July 31, 2008, provide that USI is to pay its Scaffold Builders working "turnaround" a "non-union" taxable wage of $14.00 per hour. (GC Exh. 2(b); Tr. 72) Kemp testified that between August 1 and December 31, USI was to pay its Scaffold Builders in the "core group", a non-union taxable wage of $16.56 per hour. (GC Exh. 1(a); Tr. 72). However, some time in August, USI reduced the wage and began paying a wage of $16.00 per hour to

"core group" scaffold builders (Tr. 78). Kemp testified that beginning January 1, 2004, and continuing through July 31, 2008, USI is obligated by its contract with Chevron to pay all scaffold builders working at the Pascagoula refinery including both "core group" and "turnaround" employees a "non-union" 'hourly wage' of $14.00 per hour. (GC Exh. 2(b) and 2(c); Tr. 72). Scaffold builders in the "core group" received an additional $.49 per hour for holiday pay. [GC Exh. 2(b)]. Around August 12, USI informed its employees that wage rates would change as of January 1, 2004. (Tr. 78.103). USI "severed its ties" with the Union as of August 1 and it did not inform the Union of its intentions to reduce wage rates on January 1, 2004.

Analysis

I find that the General Counsel has established a prima facie case that the Respondent USI unlawfully withdrew recognition from the Union of the unit included maintenance scaffold builders. I find the Union was duly certified as the exclusive collective bargaining representative of all the maintenance scaffold builders employed by USI at the Chevron refinery, including both categories of employees referred to by Respondent as the "core" group and the "turnaround group". I reject Respondent USI's contention that the "turnaround" employees were excluded from the unit. I find the evidence establishes that USI unlawfully withdrew recognition from the Union of the "turnaround" employees, directly bypassed the Union as the collective bargaining representative of the unit employees including both the "core group" and "turnaround" employees, engaged in a series of unilateral changes of these employees' terms and conditions of employment, all of which were mandatory subjects of bargaining. I find that the Respondent unlawfully refused to furnish the Union information it requested which related to the employees' terms and conditions of employment and were mandatory subjects of bargaining. I find the Respondent USI failed to bargain in good faith and initiated unilateral changes in the employees' terms and conditions of employment while failing and refusing to give notice to the Union to provide it an opportunity to bargain. I thus find that by each of the above, the Respondent USI violated Section 8(a)(5) and (1) of the Act. I also find that USI violated Section 8(a)(1) of the Act by the announcement of the bonus plan and by interrogating and soliciting its employees to decertify the Union.

As noted above the parties entered into a stipulated election agreement on July 30, 2003, setting out that the appropriate bargaining unit was comprised of maintenance scaffold builders. The Union won the election held on August 21, 2003, and the Union was certified on September 2, 2003 by the Board as the exclusive collective bargaining representative of the maintenance scaffold builders. After the expiration of the 8(f) project agreement on July 31, 2003, and from August 1, 2003, until the Union won the election on August 21, 2003, the Respondent had no duty to recognize the Union as the unit employees' collective bargaining representative. However once the Union won the election on August 21, 2003, it had an obligation to refrain from making any unilateral changes in the terms and conditions of employment of the unit employees. *Tri-Tech Services, Inc.*, 340 NLRB No. 97, (2003); *Consolidated Printers, Inc.*, 305 NLRB 1061 (1992). "When an employer makes changes in terms and conditions of employment of unit employees after an election, but before the union is certified, it does so at its peril in the absence of compelling economic considerations."

Taino Paper, 290 NLRB 975, 977 (1988); *Clements Wire*, 257 NLRB 1058 (1981). In *Bottom Line Enterprises*, 302 NLRB 373, 274 (1991) the Board stated:

> Absent exceptional circumstances, an employer may not justify a unilateral implementation **of a proposal on a particular subject**, submitted during negotiations for a labor agreement to succeed an expired one, on the ground of a union's failure to request bargaining on that subject. When negotiations are not in progress, we can find a waiver of a union's statutory right to bargain over a change in the unit employees' terms and conditions of employment on the basis of the union's failure to request bargaining if the union had **clear and unequivocal notice** of the proposed change and was given that notice sufficiently in advance of implementation to permit meaningful bargaining. However, when, as here, the parties are engaged in negotiations, an employer's obligation to refrain from unilateral changes extends beyond the mere duty to give notice and an opportunity to bargain; it encompasses a duty to refrain from implementation at all, unless and until an overall impasse has been reached on bargaining for the agreement as a whole. The board has recognized two limited exceptions to this general rule: "[w]hen a union, in response to an employer's diligent and earnest efforts to engage in bargaining, insists on continually avoiding or delaying bargaining," and when economic exigencies compel prompt action. Such extenuating circumstances are not, however, present in this case.
>
> Consequently, in situations where a collective-bargaining agreement has expired and the employer makes unilateral changes during negotiations for a successor collective-bargaining agreement, the employer has the burden of demonstrating that one of the limited exceptions apply, such as impasse, delay by union, or economic exigency. *North Star Steel Co.*, 305 NLRB 45 (1991). The facts in the present case show that Respondent violated its duty to bargain with the Union as the exclusive representative of bargaining unit employees by unilaterally implementing changes in terms and conditions of their employment.

Based on the foregoing I find that USI had an obligation to refrain from making any unilateral changes in the terms and conditions of the unit employees.

I find that the evidence supports a finding that the turnaround employees are employees included in the bargaining unit and that any unilateral changes in their terms and conditions of employment by USI were violative of Section 8(a)(5) and (1) of the Act. The "turnaround" employees were historically represented by the Union through the series of project agreements which provided for the Union to refer employees as maintenance scaffold builders to USI as required for surges in the work load occasioned by the shutdowns and special maintenance projects required by Chevron. Pursuant to the project agreements and the Union's representation of these employees, USI withheld from the employees' pay three (3) percent of their gross wages and health and welfare benefits contributions and special assements such as the apprenticeship training funds. There was no historical exclusion of these employees from the ranks of the Union's membership rolls. There was no complaint from USI that the Union did not represent these employees. Rather USI routinely withheld the Union dues and assessments from the employees' gross pay. It is significant that USI did

not seek to distinguish between the "core group" and the "turnaround" employees. I find in agreement with the General Counsel's arguments that the certified unit includes the "Core Group" and the "Turnaround" maintenance scaffold builders and that they share a community of interest in employment conditions. As of the time of the election prior to the reduction of the hourly wage rate of the "turnaround" employees they had shared the same $16 per hour wage scale as the "core group." After January 1, 2004, when USI unilaterally imposed the wage scale reduction on the core group employees, this was the same hourly scale of $14 received by the turnaround employees for performing the same work. In *The F. A. Barlett Tree Expert*, 137 NLRB 501, 502 (1962) the Board held that temporary employees who were hired to work seasonally and then discharged had a sufficient interest in employment conditions to be included in a unit with permanent employees as they 1) were drawn from the same work force, 2) were employed every year in substantial numbers and for substantial periods of time, 3) were comprised primarily of former employees; and 4) performed the same kind of work as did the permanent employees. Similarly in the instant case at the time of the election agreement, "all maintenance scaffold builders" employed by USI were paid the same wage scale, worked side by side and received the same health insurance and other benefits. In *United States Aluminum Corp.*, 305 NLRB 719 (1991), a temporary employee who had a reasonable expectation of recall to a permanent position, who worked alongside other production and maintenance employees, performing the same type of work, with the same supervisors, shared a community of interest with other production and maintenance employees. In the instant case as acknowledged by Kemp, at any given time USI may lay off a core group employee and retain a turnaround employee. Therefore turnaround employees have a reasonable expectation to become part of the core group.

USI's contention that the certified bargaining unit is limited to full-time employees who have worked at the Pascagoula refinery for six continuous months or more ignores the fact that USI's, August 5th, list of employees eligible to vote in the election included the names of thirty-four (34) employees six (6) of whom were turnaround employees that had not worked continuously at the Pascagoula refinery since their hire date. Moreover the turnaround employees voted without challenge in the election. It is well settled that the protection of the Act is not to be lightly withheld from employees.

I accordingly find that the Respondent had a duty to recognize and bargain with the Union with respect to both the core group and the turnaround employees. I thus find that any and all failures and/or refusals by USI to recognize and furnish information and bargain in good faith with the Union were violative of Section 8(a)(5) and (1) of the Act. It is undisputed that USI bypassed the Union in August 2004, when it announced to its employees that their wage scale was being reduced from $16 per hour to $14 per hour effective on August 1. Following the July 31, 2003, expiration of the project agreement, USI had no obligation to recognize the Union between August 1 and 21st when the Union won the election. However it had the duty to recognize and bargain with the Union once it was certified as the collective bargaining representative of the Unit employees. I find that the record supports a finding that the turnaround employees were hired and laid off by USI during the period commencing with August 21st and continuing thereafter. I find the Respondent USI's contention that the General Counsel has not established the turnaround employees were laid off during this period is without merit as the record fully supports a finding that turnaround employees were hired and laid off during this period as in the years prior thereto

as acknowledged by the testimony of Kemp and General Foreman Scruggs and in the January 5, 2004 letter from ServeX Inc.'s legal counsel.

Announcement of a Bonus Plan

The parties stipulated at the hearing that about November, 2003, USI announced a bonus plan to its employees in a meeting. However, at no point in time did USI actually implement the bonus plan or pay any employees a bonus. This announcement was made during the same period in which USI was engaged in discussions with the Union for an initial collective bargaining agreement. USI did not present any evidence that it discussed the bonus plan with the Union. Although USI did not actually implement the bonus plan, this did not erase the effect that the announcement had upon the employees' confidence in the Union as their collective bargaining representative. *American Pine Lodge Nursing*, 325 NLRB 98, 99 (1997). I find that the announcement had the foreseeable effect of restraining and coercing the unit employees in the exercise of their protected rights to be represented by a representative of their own choosing and that USI thereby violated Section 8(a)(1) of the Act.

New Health Benefits

Prior to November 2003, USI's scaffold builders received their health insurance through the Union and paid a premium for their health insurance. USI's Branch Manager Kemp testified that in November, USI offered cost-free health insurance to "core group" employees which had a value of about $3.00 per hour. USI did not notify or bargain with the Union prior to offering the cost-free health insurance. Although the Union expressed its discontent to USI implementing the cost-free insurance, USI did not cease providing it.

I find that USI violated Section 8(a)(5) and (1) of the Act by directly dealing with the represented employees and by failing to notify and bargain with the Union regarding the implementation of the cost-free insurance. *Permanent Medical Group*, 332 NLRB 1143, 1144 (2000); *Brannan Sand and Gravel*, 314 NLRB 282, 287 (1994); *American Pine Lodge*, 325 NLRB 98, 99 (1997); *Larry Geweke Ford*, 344 NLRB No. 78 (2005).

Union's Request for Information

It is undisputed as set out above that by its letter of December 17, to USI the Union requested information for all employees Respondent had laid off since the election within seven working days. The information requested was their date of hire, date of layoff, rate of pay, total number of hours worked while employed with Respondent at the Pascagoula refinery, address and phone numbers so it could represent the employees. USI did not provide the Union with the requested information. Kemp testified that the only information USI withheld that the Union had requested during the bargaining sessions was previous rates USI charged Chevron. By letter dated January 5, 2004, USI's counsel wrote, that there had been no layoff of any employees represented by the Union. USI responded that it had "reduced its work force from time to time since August 21, but that "these reductions did not affect the Core Group but instead, involve employees who are part of [its] 'turnaround' work force." USI stated that "these turnaround employees are not part of the bargaining unit and therefore not represented by the Union," and "since the Union does not represent the turnaround group

of employees, [USI] owes no duty of notice or bargaining to the Union with respect to those employees" USI also informed the Union that it initially gave it notice on about October 21 of Chevron's intention to implement a new rate schedule effective January 1, 2004, which would reduce the wages for "Core Group" employees by two dollars per hour. USI stated it had discussed a number of options with the Union in October and November and that it "continues to be available to the Union for discussion on this and other matters as necessary."

In a letter dated January 13, 2004, signed by Ellis, the Union noted that it had represented scaffold builders who did scaffold work under a maintenance agreement at the Pascagoula refinery for over thirty years. Ellis also stated, "the fact that there is occasion to hire additional scaffolding carpenters to contend with scheduled maintenance work has always fallen under the term maintenance scaffolding." Ellis also wrote, "for you to suggest that the bargaining unit at the Chevron refinery in Pascagoula, Mississippi is limited to what is known as the 'core group' of maintenance scaffolding carpenters is incorrect." In his letter Ellis defined the "core group" as "employees used to be foremen or lead persons when the scope of the maintenance work calls for the workforce to grow." Ellis further stated, "if the integrity of the 'core group' of employees is protected even at expense of scaffolding carpenters who are new to the trade it is a benefit to the new employee as he proves himself or herself and becomes part of that "core group."

I find that USI has unlawfully refused to provide the Union with Information necessary for bargaining, in violation of Section 8(a)(5) and (1) of the Act. In the instant case the information sought by the Union was clearly necessary and relevant for the Union to engage in meaningful negotiations for all maintenance scaffold builders. I find no merit to Respondent's position that it had no obligation to give notice to, require bargaining for or otherwise represent the 'turnaround' employees because these employees were not in the bargaining unit. An employer has an obligation upon request to provide information that is necessary for a union to perform its duties as a collective-bargaining representative, *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967). In the instant case the requested information clearly involves "core" terms and conditions of employment and directly relates to the issue for which the information was requested. *Atlas Metal Parts Co., Inc. v. NLRB, 660 F.2d 304, 309-310 (7th Cir. 1981); Pfizer, Inc.*, 268 NLRB 916, 918 (1984). Respondent did not provide the Union with any of the information requested prior to August 2004. Even at that point it furnished only information it deemed relevant. It has never provided the Union with the information on turnaround employees. Moreover none of the information sought was furnished in a timely manner. As of August, 2004, in excess of eight months after the Union made the request, the Respondent had still not provided the information requested. *Gloversville Embossing Corp.*, 314 NLRB 1258 (1994).

Information Given to the Employees As To How To Decertify the Union

It is undisputed that in a memorandum dated July 29, 2004, Respondent distributed the following memorandum to the unit employees:

> On July 15, 2004, you approached your Supervisor with a question about how the employees at the refinery can get rid of the Union. This memo responds to your question.

Under these circumstances, there are two ways that employees can terminate the Union's right to act as their bargaining agent. First, employees have the right under the law to file a petition with the National Labor Relations Board asking for an election to decertify their Union; provided that the petition must be signed by at least 30% of the employees in the bargaining unit. However, employees cannot file this petition until one-year after the first certification election of the Union (after it won the NLRB election – August 21, 2003). Forms and information can be obtained from the NLRB. The NLRB Regional office that has jurisdiction of this matter is:

Rodney D. Johnson, Acting Regional Director
The National Labor Relations Board, Region 15
1515 Poydras Street, Suite 610
New Orleans, LA 70112-3723
504-589-6361

Second, the law permits the employees to give their employer a petition or other document, which is signed and dated by a majority of the employees in the bargaining unit, stating that they no longer want the Union to represent them. If an employer receives such a document, it can lawfully stop bargaining with the union. However, this also may not be done until the one-year period following certification of the Union's election win, has expired.

This information has been provided in response to your question. However, the Company is neither encouraging nor discouraging you or any other employee to institute any such action, and the Company and its supervisors cannot help employees take such action or allow them to use Company time or facilities to do so. Finally, whether or not you or other employees choose to take such action will have no affect whatsoever on your treatment by the Company.

Kemp testified that the memorandum was issued in response to one employee's question about union decertification. During questioning by USI's Counsel, Kemp changed this testimony to say that "some" employees asked how they could decertify.

I find that Respondent violated Section 8(a)(1) of the Act by its distribution to employees of the decertification memorandum as it effectively solicited its employees to decertify the Union. Initially as argued by the General Counsel, the testimony offered by Kemp that the memorandum was a response to an inquiry by "one" or "some" employees who were never identified at the hearing leaves the inference that employee interest in decertification was speculative, questionable or nonexistent. Moreover this memorandum was not distributed until July 29, 2004, close to a year after the Union's certification at which time the Respondent had already been served with a Consolidated Complaint and Notice of Hearing containing several unfair labor practice allegations. This was also after the Respondent had distributed in February 2004, the memorandum issued by Site Superintendent T. C. Plylar, Jr., advising employees they were no longer represented by the Union.

The decertification memorandum constituted unlawful interrogation of the employees to reveal their support or lack of support of the Union as well as solicitation to decertify the Union. *Gardner Engineering*, 313 NLRB 755 (1994), When considered in the context of the Respondent's other unfair labor practices it "unlawfully undermines the Union and influences employees to reject the Union as their bargaining representative." *Wire Products Mfg. Corp.*, 326 NLRB 625, 626 (1988).

Change in the Method of Official Paycheck Distribution for Bargaining Unit Employees

Prior to February 24, 2004, USI issued paychecks to laid off employees within twenty-four (24) hours. By its memo dated February 24, 2004, USI notified its bargaining unit employees that, "since United Scaffolding, Inc. has gone from being Union to being open shop, any employee who is laid off, fired or who quits must be paid their wages in full at the next regular payday, not to exceed 15 days from the date of their discharge or termination." Kemp acknowledged in his testimony that this memo indicated that United Scaffolding had gone from being union to open shop. Kemp also admitted that USI did not notify the Union prior to the issuance of this memo. He also admitted that USI did not bargain with the union about this change in procedure. Kemp also admitted that at the time that the memo was issued on February 24, USI did start to follow the procedures set forth in the memo.

General Counsel in his brief asserts that USI notified its employees that it had "gone from being union to being an open shop" and that employees laid off would have to wait up to fifteen (15) days from their termination date to receive their wages, that USI implemented the new payroll procedure without notifying or consulting with the Union and that an employee's pay is a mandatory subject of bargaining. General Counsel also notes that in USI's answer it asserts that the memorandum merely informs employees of the differences in its payroll policy after July 31, General Counsel notes that USI waited seven months after July 31, to inform its employees and did not present evidence that it made an effort to inform the employees that since August 21, they were represented by the Union.

Respondent in its brief contends that the change to final paycheck distribution does not amount to a material, substantial and significant change and that there is no evidence that the change adversely affected any employees. It argues further that the difference in the two distribution procedures amounts to a maximum of 14 days, that it only implemented this change for one week and that the change is merely a de minimus change that does not violate the Act.

I find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to notify and bargain with the Union prior to implementing the new payroll distribution procedure. I find this change to have been a substantial change which was actually implemented for the period of one week. I find the change involved a mandatory subject of bargaining. I reject Respondent's assertion that this was merely a de minimus violation of the Act.

Conclusions of Law

1. Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> INCLUDED: All employees employed by United Scaffolding, Inc. as maintenance scaffold builders at the Chevron Refinery in Pascagoula, Mississippi, who were employed during the payroll period ending July 20, 2003. EXCLUDED: All other employees, office clerical employees, subcontract employees, professional employees, guards and supervisors as defined in the Act.

At all times since August 21, 2003, the Union has been the exclusive collective bargaining representative of the employees in the above-described unit within the meaning of Section 9(b) of the Act.

4. Respondent violated Section 8(a)(1) of the Act by:

(a) The announcement of the bonus plan.

(b) Interrogating and soliciting employees to decertify the Union.

5. The Respondent violated Section 8(a) (5) and (1) of the Act by:

(a) Its withdrawal of Recognition from the Union as the exclusive collective bargaining representative of the turnaround maintenance scaffold builders.

(b) The failure and refusal to timely furnish the Union with information necessary for it to represent the unit employees.

(c) The unilateral layoff of its unit employees without providing the Union with prior notice and a reasonable opportunity to bargain concerning this matter.

(d) Unilaterally reducing the wages of the bargaining unit employees including both the core group employees since August 21, 2003, and January 2004, and the turnaround employees in January 2004, without affording the Union with notice and a reasonable opportunity to bargain.

(e) The unilateral implementation of a new health insurance policy and benefits for the Union without affording the Union prior notice and a reasonable opportunity to bargain concerning this matter.

(f) The unilateral change in the procedure of final paycheck distribution for bargaining unit employees without providing the Union with prior notice and a reasonable opportunity to bargain with the Respondent concerning this matter.

The above unfair labor practices in conjunction with Respondent's status as an employer affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, it shall be ordered to cease and desist therefrom and take certain affirmative actions designed to effectuate the policies of the Act.

Having found that Respondent unilaterally announced the bonus plan and interrogated and solicited employees to decertify the Union and unilaterally withdrew recognition from the Union of the turnaround employees and implemented the wage reductions, layoffs, health insurance policies, final check distribution procedure and having failed and refused to provide the Union with information necessary for it to fulfill its obligations as the collective bargaining representative of the unit employees, it shall be ordered to cease and desist therefrom and make the employees whole for any loss of wages or benefits sustained as a result of the aforesaid unfair labor practices. Interest shall be computed as in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I recommend that Respondent be ordered to restore the status quo ante as existed prior to these changes with the exception of the implementation of the health insurance policy and premiums paid by Respondent for those benefits subject to the written request of the Union to cease and desist from furnishing this benefit. I find that the context of the unfair labor practices has the effect of weakening the Union's position and that remedies as set out in *Transmission Navigation Corporation*, 170 NLRB 389 (1968) and *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962) are in order. I shall also order that Respondent post the attached "Notice to Employees" a copy of which is attached hereto as "Appendix" for a period of 60 consecutive days.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:[3]

ORDER

The Respondent, United Scaffolding, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Unilaterally announcing a bonus plan.

(b) Interrogating and soliciting employees to decertify the Union.

(c) Withdrawing recognition from the Union as the exclusive collective bargaining representative of the turnaround maintenance scaffold builders.

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3 If no exceptions are filed as provided by § 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Failing and refusing to timely provide the Union with information necessary for the Union to fulfill its obligations as the collective bargaining representative of the Unit employees.

(e) Unilaterally laying off its unit employees without affording the Union with prior notice and a reasonable opportunity to bargain concerning this matter.

(f) Unilaterally reducing the wages of its bargaining unit employees.

(g) Unilaterally implementing a new health insurance policy and benefits for the unit employees.

(h) Unilaterally implementing a change in procedure of its final paycheck distribution.

In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions designed to effectuate the policies of the Act.

(a) On request bargain with the Union with respect to each of the above unilateral changes and an initial contract for the period of one year or until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains for and executes an agreement with the Union on these matters; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision, or to commence negotiations within 5 days of Respondent's notice of its desire to bargain with the Union; (4) the subsequent failure of the Union to bargain in good faith.

(b) On request of the Union, rescind the health insurance policy.

(c) Rescind the reduction in wages of the unit employees.

(d) Immediately furnish the Union with the information which was wrongfully withheld from it in response to the Union's request.

(e) Make the employees whole for any loss of wages and benefits suffered as a result of the unilateral layoffs and reduction in wages and benefits and changes in the Final Check Distribution policy, with interest.

(f) Preserve and, within 14 days of a request, provide at the office designated by the National Labor Relations Board or its agents, one copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.

(g) Within 14 days after service by the Region, post at its facility in Pascagoula, Mississippi copies of the attached notice marked "Appendix."[4] Copies of the Notice, on forms provided by the Regional Director of Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notice is not altered, defaced or covered by any other material. In the event that during the pendency of these proceedings, the Respondent has gone out of business or the facility involved in these proceedings has closed, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to Employees, to all employees and former employees employed by the Respondent at any time since April 2003.

(h) Within 21 days after service by the Regional Director, file a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated at Washington, D.C.

Lawrence W. Cullen
Administrative Law Judge

4 If this order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading, "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read: "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by the Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT interrogate and solicit our employees to decertify United Brotherhood of Carpenters and Joiners of America, Mississippi Carpenters Local 303.

WE WILL NOT unilaterally announce a bonus plan.

WE WILL NOT withdraw recognition from the Union as the exclusive collective bargaining representative of the turnaround maintenance scaffold builders..

WE WILL NOT unilaterally lay off our bargaining unit employees and or reduce the wages of our bargaining unit employees.

WE WILL NOT fail and refuse to timely provide the Union with information necessary for it to fulfill its obligations as the collective bargaining representative of the unit employees.

WE WILL NOT unilaterally implement a new health insurance policy and benefits for the unit employees.

WE WILL NOT unilaterally implement a change in the procedure of our final paycheck distribution policy.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL recognize and bargain in good faith with the Union as the exclusive collective bargaining representative of our unit employees in the following appropriate unit including both core group and turnaround maintenance scaffold builders. The appropriate unit is:

INCLUDED: All employees employed by United Scaffolding, Inc. as maintenance scaffold builders at the Chevron Refinery in Pascagoula, Mississippi, who were employed during the payroll period ending July 20, 2003.

EXCLUDED: All other employees, office clerical employees, subcontract employees, professional employees, guards and supervisors as defined in the Act.

WE WILL rescind the unlawful unilateral reduction in wages of our unit employees.

WE WILL immediately furnish the Union with the information requested of us found in the decision to be necessary for the Union to represent the unit employees.

WE WILL rescind, the health insurance benefit if requested to do so by the Union.

WE WILL make the unit employees whole for any loss of wages or benefits sustained by them as a result of the unilateral layoffs and reduction in wages, and changes in the final check distribution procedure with interest.

UNITED SCAFFOLDING, INC.
(Employer)

Dated: _____ **By:** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

4035 University Parkway, Suite 200, Winston-Salem, NC 27106-3325.
Telephone: (336) 631-5201, Hours: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S
COMPLIANCE OFFICER, (336) 631-5230